

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LAVEINA S. WHITE)	
Claimant)	
VS.)	
)	Docket No. 236,759
CENTRAL KANSAS TRUSS CO., INC.)	
Respondent)	
AND)	
)	
KANSAS BUILDING INDUSTRY WC FUND)	
Insurance Carrier)	

ORDER

Claimant requested Appeals Board review of Administrative Law Judge John D. Clark's August 9, 2000, Award and August 11, 2000, Nunc Pro Tunc Order. The Appeals Board heard oral argument on January 24, 2001.

APPEARANCES

Claimant appeared by her attorney, Stephen J. Jones of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Jeffery R. Brewer of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and has adopted the stipulations listed in the Award.

ISSUES

Claimant appeals from an Award limiting her to permanent partial disability benefits based on a 5 percent permanent impairment of function to a scheduled left upper extremity injury including the shoulder.¹ The claimant argues she proved that her July 13, 1998, work-related accident resulted in permanent injury to her neck, shoulder, and left upper

¹ See K.S.A. 1998 Supp. 44-510d(a)(13), permanent partial disability computed based on a maximum of 225 weeks.

extremity resulting in a whole body injury.² Thus, claimant contends she is entitled to an award of permanent partial general disability benefits based on 415 weeks instead of an award of permanent partial disability benefits based on 225 weeks as limited by the scheduled injury statute.

But respondent contends the Administrative Law Judge's Award is correct and the claimant proved only a scheduled injury and not a whole body injury. Accordingly, respondent requests the Appeals Board to affirm the Award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the parties' arguments, the Appeals Board makes the following findings and conclusions:

On July 13, 1998, claimant, while performing her regular duties for the respondent, felt a pull and pop in her left shoulder and neck as she was stacking boards at work. Respondent first provided claimant with medical treatment through the company's physician, George R. Watson, D.O. Claimant did not improve, and respondent's insurance carrier then referred claimant to orthopedic surgeon J. Mark Melhorn, M.D.

Dr. Melhorn first saw claimant on August 6, 1998, with complaints of pain in her left shoulder, left upper extremity, and neck. Additionally, claimant complained of left upper extremity numbness. Dr. Melhorn placed claimant on non-steroid medication, exercises, stretching, and hot and cold therapy. He saw claimant on five other occasions with November 4, 1998, being the last time he examined and treated claimant. At that visit, Dr. Melhorn released claimant to return to regular work but limited the work that she could do with her left upper extremity over shoulder level. His final diagnosis was painful left upper extremity. In accordance with the *AMA Guides to the Evaluation of Permanent Impairment*, Fourth Edition, Dr. Melhorn assessed claimant with a 3.1 percent permanent functional impairment of the left upper extremity including the shoulder. Although claimant had made consistent complaints of pain in her neck area, Dr. Melhorn testified that he could not find any objective evidence for claimant's neck pain complaints and did not assess claimant with any permanent functional impairment in regard to her neck or cervical spine area. Dr. Melhorn also testified, in reply to a question regarding the anatomical location of the trapezius muscle, "Yes. It's part of the shoulder girdle."

At claimant attorney's request, physical medicine and rehabilitation physician Pedro A. Murati, M.D., examined and evaluated claimant on November 25, 1998, and again on August 5, 1999. Dr. Murati's final diagnosis was cervical strain with left C7 radiculopathy, mild left rotator cuff strain, left shoulder pain, and bilateral carpal tunnel

² See K.S.A. 1998 Supp. 44-510e(a), permanent partial general disability computed based on a maximum of 415 weeks.

syndrome not related to this injury. Utilizing the *AMA Guides to the Evaluation of Permanent Impairment*, Fourth Edition, Dr. Murati found claimant had a 15 percent whole body permanent functional impairment rating for the C7 radiculopathy and a 3 percent left upper extremity rating for loss of range of motion for the left shoulder which converts to a 2 percent whole body functional impairment rating. Those two whole body functional impairment ratings were combined pursuant to the *AMA Guides* for a 17 percent whole body permanent functional impairment. Dr. Murati also imposed numerous and various restrictions on claimant's use of her left upper extremity including lifting activities limited to 20 pounds occasionally, 10 pounds frequently, and 5 pounds constantly.

The Administrative Law Judge appointed physical medicine and rehabilitation physician Philip R. Mills, M.D., to perform an independent medical examination of claimant. Dr. Mills first saw claimant on January 22, 1999, with complaints of pain in her neck, left shoulder, and bilateral upper extremities. His diagnosis was left shoulder discomfort with mild dependent swelling from disuse and probable rotator cuff strain. At that examination, Dr. Mills did not think claimant had met maximum medical improvement. He recommended claimant to undergo an aggressive physical therapy treatment program in an effort to improve the range of motion in her left upper extremity.

Dr. Mills saw claimant again on December 15, 1999, after she had completed the aggressive physical therapy program. At that time, claimant complained of pain in her neck and left upper extremity with swelling and aching. After the examination, Dr. Mills' diagnosis was left trapezius fibromyalgia. Also, at that time, Dr. Mills felt claimant had met maximum medical improvement. Based on the *AMA Guides to the Evaluation of Permanent Impairment*, Fourth Edition, he assessed claimant with a 5 percent permanent functional impairment to the left upper extremity including the shoulder. Dr. Mills also concluded that claimant did not have a permanent functional impairment to her neck or cervical spine area. Dr. Mills found claimant did not have a passive cervical range of motion loss, but she did have an active range of motion loss. The doctor restricted claimant to avoid prolonged and repetitive overhead reaching with the left arm. The claimant argued that even if it was determined claimant had not permanently injured her cervical spine, any injury to the trapezius muscle was not limited to the shoulder but included the neck as well. Dr. Mills, during his deposition testimony, however, also concluded "there is just no question the trapezius is a shoulder girdle muscle."

The Appeals Board concludes the medical opinions of claimant's treating physician, orthopedic surgeon J. Mark Melhorn, M.D., and the appointed independent medical examining physician, physical medicine and rehabilitation physician Philip R. Mills, M.D., are more persuasive and convincing, in this case, than the medical opinions of physical medicine and rehabilitation physician Pedro A. Murati, M.D., who was employed by the claimant. Therefore, considering the opinions of both Dr. Melhorn and Dr. Mills, the Appeals Board finds that claimant's award for the work-related injury should be limited to a disability to claimant's left upper extremity including the shoulder and not a whole body disability.

Accordingly, the Appeals Board, based on the testimony of these two physicians and for the other reasons set forth by the Administrative Law Judge in the Award, affirms the Award. It is not necessary to repeat the Administrative Law Judge's findings and conclusions in this Order. Therefore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions as its own as if specifically set forth herein.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge John D. Clark's August 9, 2000, Award and August 11, 2000, Nunc Pro Tunc Order should be, and are hereby, affirmed.

The remaining orders listed in the Award and the Nunc Pro Tunc Order are adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this ____ day of February 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stephen J. Jones, Wichita, KS
Jeffery R. Brewer, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director